

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code chapter 17A and sections 452A.59 and 452A.76, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Chapter 67, "Administration," and Chapter 68, "Motor Fuel and Undyed Special Fuel," Iowa Administrative Code.

Item 1 amends rule 701—10.71(421) to correct an Iowa Code reference.

Item 2 amends subrule 10.71(1) to reflect the increase in the penalties for the illegal use of dyed fuel.

Item 3 amends subrule 10.71(2), paragraphs "a" through "e," to reflect the increase in the penalties for the illegal importation of untaxed fuel.

Item 4 amends subrule 10.71(5) to reflect the increase in the penalty for a person interfering with the inspection of fuel or shipping papers by authorized Department of Revenue or Department of Transportation personnel.

Item 5 amends the implementation clause for rule 701—10.71(452A).

Item 6 amends rule 701—67.12(452A) and the implementation clause to require that an invoice for the transportation of ethanol blended gasoline or biodiesel blended fuel state its designation.

Item 7 amends subrule 68.1(1) to show that the tax rates for gasoline (21¢) and ethanol blended gasoline (19¢) are the same for fiscal year 2010 as they were for fiscal year 2009.

Item 8 amends subrule 68.1(2) to exclude aviation gasoline from the formula for determining the tax rate for gasoline and ethanol blended fuel beginning calendar year 2009 for tax rates effective July 1, 2010, and after.

Item 9 amends the implementation clause for rule 701—68.2(452A).

Item 10 amends rule 701—68.18(452A) and the implementation clause to require a bill of lading to identify the percentage of renewable fuel in the product being transported and state whether any diesel fuel being transported is dyed or undyed.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than September 14, 2009, to the Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, or at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 1, 2009. Such written comments should be directed to the Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 4, 2009.

These amendments are intended to implement Iowa Code section 452A.3 as amended by 2009 Iowa Acts, Senate File 419, section 44; section 452A.10; section 452A.12 as amended by 2009 Iowa Acts, Senate File 478, section 140; section 452A.60; section 452A.74A as amended by 2009 Iowa Acts, Senate File 478, section 141; and section 452A.76.

The following amendments are proposed.

ITEM 1. Amend rule 701—10.71(421), parenthetical implementation statute, as follows:

701—10.71(~~421~~ 452A) Penalty and enforcement provisions.

ITEM 2. Amend subrule 10.71(1) as follows:

10.71(1) *Illegal use of dyed fuel.* The illegal use of dyed fuel in the supply tank of a motor vehicle shall result in a civil penalty assessed against the owner or operator of the motor vehicle as follows:

- a. A ~~\$200~~ \$500 ~~fine~~ penalty for the first violation.
- b. A ~~\$500~~ \$1,000 ~~fine~~ penalty for a second violation within three years of the first violation.
- c. A ~~\$1,000~~ \$2,000 ~~fine~~ penalty for third and subsequent violations within three years of the first violation.

ITEM 3. Amend paragraphs **10.71(2)“a”** to “e” as follows:

a. For a first violation, the importing vehicle shall be detained and a ~~fine~~ penalty of ~~\$2,000~~ \$4,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable for payment of the ~~fine~~ penalty.

b. For a second violation, the importing vehicle shall be detained and a ~~fine~~ penalty of ~~\$5,000~~ \$10,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the ~~fine~~ penalty.

c. For third and subsequent violations, the importing vehicle and the fuel shall be seized and a ~~fine~~ penalty of ~~\$10,000~~ \$20,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the ~~fine~~ penalty.

d. If the owner or operator of the importing vehicle or the owner of the fuel fails to pay the tax and ~~fine~~ penalty for a first or second offense, the importing vehicle and the fuel may be seized. The Iowa department of revenue, the Iowa department of transportation, or any peace officer, at the request of either department, may seize the vehicle and the fuel.

e. If the operator or owner of the importing vehicle or the owner of the fuel moves the vehicle or the fuel after the vehicle has been detained and a sticker has been placed on the vehicle stating that “this vehicle cannot be moved until the tax, penalty, and interest have been paid to the department of revenue,” an additional penalty of ~~\$5,000~~ \$10,000 shall be assessed against the operator or owner of the importing vehicle or the owner of the fuel.

ITEM 4. Amend subrule 10.71(5) as follows:

10.71(5) *Prevention of inspection.* The Iowa department of revenue or the Iowa department of transportation may conduct inspections for coloration, markers, and shipping papers at any place where taxable fuel is or may be loaded into transport vehicles, produced, or stored. Any attempts by a person to prevent, stop, or delay an inspection of fuel or shipping papers by authorized personnel shall be subject to a civil penalty of not more than ~~\$1,000~~ \$2,000 per occurrence. Any law enforcement officer requested by the Iowa department of revenue or Iowa department of transportation may physically inspect, examine, or otherwise search any tank, fuel supply tank of a vehicle, reservoir, or other container that can or may be used for the production, storage, or transportation of any type of fuel.

ITEM 5. Amend rule **701—10.71(452A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 452A.74A as amended by ~~1995~~ 2009 Iowa Acts, ~~chapter 155, section 36~~ Senate File 478, section 141.

ITEM 6. Amend rule 701—67.12(452A) as follows:

701—67.12(452A) Form of invoice. Whenever an invoice is required to be kept or prepared by Iowa Code chapter 452A, the invoice must:

1. Be prepared by someone other than the purchaser and include the seller's name, address, and identification number.
2. Include the purchaser's name and address.
3. Contain a serial number of three or more digits.
4. Include the calendar date of purchase.
5. Indicate the type of fuel purchased. Diesel fuel must be designated as dyed or undyed.
6. Indicate the quantity of fuel purchased in gross gallons.
7. Indicate the total purchase price and show separately the amount of state and federal fuel tax included in the purchase price or include a statement that all state and applicable federal taxes are included in the purchase price.

8. For ethanol blended gasoline or biodiesel blended fuel, state its designation as provided in Iowa Code section 214A.2.

~~8. 9.~~ Be prepared on paper which will prevent erasure or alteration or on another form approved by the department.

This rule is intended to implement Iowa Code ~~sections~~ section 452A.10, section 452A.12 as amended by 2009 Iowa Acts, Senate File 478, section 140, and section 452A.60 as amended by 1995 Iowa Acts, chapter 155.

ITEM 7. Amend subrule 68.2(1) as follows:

68.2(1) The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

Gasoline	20.3¢ per gallon (for July 1, 2003, through June 30, 2004)
	20.5¢ per gallon (for July 1, 2004, through June 30, 2005)
	20.7¢ per gallon (for July 1, 2005, through June 30, 2006)
	21¢ per gallon (for July 1, 2006, through June 30, 2007)
	20.7¢ per gallon (for July 1, 2007, through June 30, 2008)
	21¢ per gallon (for July 1, 2008, through June 30, 2009 <u>2010</u>)
LPG	20¢ per gallon
Ethanol blended gasoline	19¢ per gallon (for July 1, 2003, through June 30, 2009 <u>2010</u>)
E-85 gasoline	17¢ per gallon beginning January 1, 2006, through June 30, 2007
	19¢ per gallon (for July 1, 2007, through June 30, 2009 <u>2010</u>)
Aviation gasoline	8¢ per gallon
Special fuel (diesel)	22.5¢ per gallon
Special fuel (aircraft)	3¢ per gallon
CNG	16¢ per 100 cu. ft.

ITEM 8. Amend subrule **68.2(2)**, introductory paragraph, as follows:

68.2(2) Except as otherwise provided in this subrule, until June 30, 2012, this subrule shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state. The rate of the excise tax shall be based on the number of gallons of ethanol blended gasoline that is distributed in this state as expressed as a percentage of the number of gallons of motor fuel distributed in this state. Aviation gasoline shall not be used, beginning calendar year January 1, 2009, in determining the percentage basis for the tax rates effective July 1, 2010, and after. The number of gallons of ethanol blended gasoline and motor fuel distributed in this state shall be based on the total taxable gallons of ethanol blended gasoline and motor fuel as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department

shall determine the percentage for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:

ITEM 9. Amend rule **701—68.2(452A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 452A.3 as amended by ~~2007~~ 2009 Iowa Acts, Senate File ~~601~~ 419, section 44, and sections 452A.8 and 452A.85.

ITEM 10. Amend rule 701—68.18(452A) as follows:

701—68.18(452A) Bill of lading or manifest requirements. Whenever a bill of lading or manifest is required to be issued, carried, retained, or submitted by these rules, it shall meet the following minimum requirements:

1. Contain the name and address of the refinery, terminal, ethanol plant, biodiesel plant or point of origin.
2. Contain the date of withdrawal or import.
3. Contain the name of the shipper-supplier-consignor.
4. Contain the name of the purchaser-consignee.
5. Contain the place of actual destination.
6. Contain the name of the transporter.
7. ~~The~~ Contain the gross gallons by fuel type.
8. Contain the designation for ethanol blended gasoline or biodiesel blended fuel as provided in Iowa Code section 214A.2.
9. Contain a statement designating whether diesel fuel is dyed or undyed.
- ~~8- 10.~~ Have machine printed thereon a serial number of not less than four digits.

This rule is intended to implement Iowa Code sections 452A.10, 452A.12, 452A.60, and 452A.76 as amended by ~~1995 Iowa Acts, chapter 155.~~